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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Municipalities – Elections – Candidates –  
Conflicts of Interest – Mayors – City  
Councils – Dallas County

The governing body of the City of Selma does not have the authority to appoint an individual to perform all of the duties related to conducting a municipal election for the city. If the mayor is a candidate in the election, the city council is authorized to appoint a person to perform only the duties of the mayor required under section 11-46-36 of the Code of Alabama. If the city clerk is a candidate in the election, the city council is authorized under section 17-11-15 of the Code to appoint another person to perform the duties of the absentee election manager that are normally performed by the city clerk.

Dear Mr. Nunn:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Selma.

QUESTIONS

1. Does the governing body of the City of Selma have the authority to appoint an individual to perform some or all of the duties of the mayor, city clerk, and/or the governing body during the period for holding municipal elections?

2. If the answer is yes to Question 1, can the governing body appoint an individual to perform the statutory duties and requirements of the mayor, city clerk, and/or the governing body that are outlined via statutory law?

3. If the answers to Questions 1 and 2 are yes, can the Probate Judge of Dallas County be considered as a candidate to be appointed by the City Council of Selma to perform these required duties for holding an election?

4. If the governing body has the authority to appoint an individual to perform such duties, are there any time restraints and/or restrictions in appointing said individual?

5. If the governing body has the authority to appoint an individual to perform said duties, what would be the correct procedure in accomplishing this appointment?

#### FACTS AND ANALYSIS

The municipal elections for the City of Selma and the elections for the majority of the cities and towns having a mayor-council form of government are conducted pursuant to the provisions of section 11-46-20, *et seq.*, of the Code of Alabama. ALA. CODE § 11-46-20 to § 11-46-74 (1992 & Supp. 2007). Some provisions in title 17 of the Code are also applicable to municipal elections. These Code sections delegate specific election duties to the mayor, the municipal governing body, and to the city clerk.

The mayor is required by statute to perform certain election duties, including, but not limited to, the following: section 11-46-22 of the Code states "it shall be the duty of the mayor to give notice of all municipal elections." (ALA. CODE § 11-46-22 (Supp. 2007)); statements of candidacy are filed with the mayor, and the mayor must cause the printing of the ballots (ALA. CODE §§ 11-46-22 and 11-46-25 (Supp. 2007 & 1992)); section 11-46-36 of the Code requires the "mayor or other chief executive officer of the city or town" to make a list of qualified voters who reside within the corporate limits of the city and who are registered to vote and to file this list with the city clerk (ALA. CODE § 11-46-36 (1992)).

If the mayor is a candidate in the election, the mayor is specifically disqualified from performing the duties set forth in section 11-46-36 of the Code relating to making a list of qualified voters and filing the list with the city clerk. Section 11-46-37 of the Code states as follows:

In the event the mayor or other chief executive officer of any city or town is a candidate in any municipal election held under the provisions of this article, *he shall be disqualified to perform the duties set forth in Section 11-46-36*, and said duties shall be performed by a disinterested person appointed by the board of aldermen or other governing body of the city or town.

ALA. CODE § 11-46-37 (1992) (emphasis added). Thus, when the mayor is a candidate in an election, the duties required of the mayor in section 11-46-36 (creating the list of voters for the municipal election) must not be performed by the mayor, and the governing body of the city (the city council) must appoint a disinterested person to perform those duties.

This Office has been informed that, in most instances, when the mayor is disqualified from performing the duties in section 11-46-36, the city clerk is appointed by the council to perform those duties. Your request also states that the city clerk of Selma has been appointed by the council to perform these duties for the last three municipal elections held by the City of Selma. The law does not, however, require that the city clerk must be appointed to perform the duties normally required of the mayor in section 11-46-36 of the Code. The law does require that the person appointed by the council be "disinterested." This term is defined as "[f]ree from bias, prejudice, or partiality; not having a pecuniary interest." BLACK'S LAW DICTIONARY 502 (8<sup>th</sup> ed. 2004). Whether a person is "disinterested" is a factual determination. This Office does not make factual determinations. If the city council determines that a particular person is a disinterested person, the city council may be authorized to appoint that person to perform the specific duties required of the mayor under section 11-46-36 of the Code. The mayor is not disqualified by statute from performing any other duties delegated to the mayor with respect to conducting the municipal election.

The municipal clerk (or city clerk) is also delegated specific duties with respect to the municipal election, including, but not limited to, the following: preparation of the list of voters for each ward or district (ALA. CODE § 11-46-36 (1992)); notification of election officials to attend election school (ALA. CODE § 11-46-30 (1992)); serving as the absentee election manager (ALA. CODE § 17-11-15 (2006)). The only statutory duty the city clerk is specifically disqualified from performing are the duties as absentee election manager and that applies

only when the city clerk is also a candidate in the election. Section 17-11-15 of the Code states, in pertinent part, as follows:

In any municipal election that is held at a time different from a primary or general election, the duties with reference to the handling of absentee ballots which are required of the circuit clerk shall be performed by the town clerk, city clerk, or other officer performing the duties of the clerk. If such clerk or other officer is also a candidate in such election, the governing body of the city or town shall appoint a qualified elector of the city or town to perform the duties. . . .

ALA. CODE § 17-11-15 (2006). Thus, the city clerk serves as the absentee election manager for the municipal election, unless the city clerk is a candidate in that election. In that case, the city council is authorized to appoint a qualified elector of the city or town to serve as the absentee election manager.

The specific duties delegated to the city council include, but are not limited to, the following: appointment of election officials (ALA. CODE § 11-46-27 (Supp. 2007)); provide for the holding of an election school (school of instruction) (ALA. CODE § 11-46-30 (1992)); place a voting machine on display or place a sample ballot on display (ALA. CODE § 11-46-31 (Supp. 2006)). None of these statutes disqualify the city council or a member of the council from performing these duties if a member of the council is a candidate. Section 11-46-27 states that the city council or a majority of them "must" appoint election officials to conduct the election. ALA. CODE § 11-46-27 (Supp. 2007). Thus, the city council may not delegate this duty to another person to perform. The city council is also required to "provide for holding a school or schools of instruction" for election officials. ALA. CODE § 11-46-30 (1992). This section does not require the city council to actually conduct the election school. Given the language used in this section, the city council could enter into a contract with the appropriate persons or entities that would conduct a school of instruction for the election officials.

The Legislature has set forth the procedure and manner of conducting municipal elections in chapter 46 of title 11 and in some provisions of title 17 of the Code. These provisions provide for the mayor to be disqualified from performing certain duties when the mayor is a candidate and for the city clerk to be disqualified from serving as the absentee election manager when the city clerk is a candidate. The Legislature has not authorized or provided a procedure that allows the municipal governing body to transfer all duties related to conducting a municipal election to the probate judge or to any other person. The powers and duties conferred by the Legislature to a municipal governing body

and to municipal officers cannot be delegated by the municipal governing body or its officers to others without specific authority to do so. McQuillin, *The Law of Mun. Corps.*, § 10.42 (3<sup>rd</sup> ed. 2006).

This Office has, however, recognized that an official, although not disqualified by statute, may voluntarily disqualify himself or herself from performing certain election duties if the person feels that performing that duty would be or would appear to be a conflict of interest. Opinions to Honorable Jim Bennett, Secretary of State, dated October 22, 1993, A.G. No. 94-00026, and to Honorable Michael F. Bolin, Probate Judge, Jefferson County, dated May 7, 2004, A.G. No. 2004-135. An example of such a situation would be where the mayor's spouse, a council member's spouse, or the city clerk's spouse was a candidate in the municipal election.

You specifically ask whether the probate judge may be appointed to perform some or all of the duties of conducting the municipal election. It is not clear from your request, but it is assumed that the probate judge would be appointed in his or her official capacity, would be compensated for those services, and is willing to accept the appointment. This Office, however, is not aware of any provisions in the general laws that authorize the probate judge to conduct the election for a municipality. See Opinion to Honorable T. Dwight Reid, Attorney, City of Saraland, dated March 27, 2006, A.G. No. 2006-075 (no authority for probate judge to hold advisory referendum for a municipality). Furthermore, there is no general authority for a municipality to appoint a probate judge in his or her official capacity or to contract with a probate judge in his or her official capacity to perform specific election duties when a municipal officer or employee is disqualified from performing those duties.

Whether the probate judge may be appointed to perform these duties in his or her individual capacity raises additional concerns. It is difficult to determine how the probate judge could perform the above-mentioned duties in an individual capacity. Any work performed in an individual capacity must be performed while the probate judge is off duty and without the use of any county property or employees. These questions should also be presented to the Ethics Commission for a determination as to whether any ethics laws would be violated if the probate judge performs these functions for the city in an individual capacity or in his or her official capacity.

Your last two questions relate to the time frame and procedure for appointing an individual to perform certain election duties when an appointment is authorized under the law. The law does not specifically set forth a time frame or a deadline for making the appointments. Because appointments may only be made if the mayor and/or the city clerk are candidates, the appointments must, therefore, be made after this fact is known and should be made as soon as possible to allow the appointed person the ability to timely perform the duties

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required. The only procedure required for making the appointment is for the city council to meet in a properly called and conducted meeting and, by majority vote, appoint a person or persons to perform the specified duties of the mayor and city clerk and, if necessary, enter into a contract with the appropriate parties.

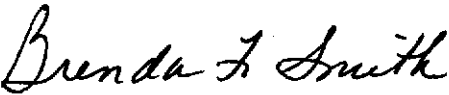
#### CONCLUSION

The governing body of the City of Selma does not have the authority to appoint an individual to perform all of the duties related to conducting a municipal election for the city. If the mayor is a candidate in the election, the city council is authorized to appoint a person to perform only the duties of the mayor required under section 11-46-36 of the Code. If the city clerk is a candidate in the election, the city council is authorized under section 17-11-15 of the Code to appoint another person to perform the duties of the absentee election manager that are normally performed by the city clerk.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

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